United States Department of Labor
Employees' Compensation Appeals Board

SANDRA D. PRUITT, Appellant	)	
and	)	**Docket No. 05-739**
	)	**Issued: October 12, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Oakland, CA, Employer	)	

Appearances:
Sandra D. Pruitt, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2005 appellant timely filed an appeal from a July 29, 2004 merit decision of the Office of Workers' Compensation Programs denying appellant's claim for wage-loss compensation for three hours per day for the period May 21 to June 13, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she was partially disabled from May 21 to June 13, 2003.

FACTUAL HISTORY

This case was previously before the Board. On October 6, 2000 appellant, then a 39-year-old customer service supervisor, filed a claim for occupational stress. She stopped work the same day. By decision dated March 14, 2001, the Office found that she had not substantiated any compensable factors of employment. By decision dated May 23, 2002, the Board set aside the Office's March 14, 2001 decision, finding that appellant had substantiated compensable

factors of employment relating to her regular and specially assigned duties as a supervisor. The case was remanded for further development.[1] The Office subsequently accepted appellant's claim for major depression due to the performance of her regular duties as a customer service supervisor. Appropriate compensation, including that of temporary total disability, was paid.

On December 18, 2002 appellant accepted the employing establishment's job offer to work in a nonsupervisory position as a modified customer service supervisor. She returned to work on January 27, 2003. By decision dated April 24, 2003, the Office found that the position of modified customer service supervisor fairly and reasonably represented her wage-earning capacity.[2]

In a Form CA-7, claim for compensation, dated May 25, 2004, appellant claimed intermittent time off work during the period May 21 through June 13, 2003. An accompanying time analysis form reflected that appellant took 8 hours of leave without pay from May 21 to 30, 2003 and 3 hours of leave without pay from June 2 to 13, 2003, for a total of 11 hours of leave without pay for the period.

In a May 27, 2003 report, Dr. Stephen Heckman, Ph.D., a clinical psychologist, noted that appellant was given telephone advice on May 21, 2003 and examined on May 22, 2003 for complaints of dysphoric mood, overwhelming anxiety and agitation, racing, ruminative thoughts and dread of further pressure from manager/supervisors. Appellant was diagnosed with adjustment disorder with mixed emotions. Dr. Heckman opined that appellant was temporarily totally disabled from May 21, 2003 and should only work five hours per day in her modified position until her next scheduled examination on June 13, 2003. In a June 12, 2003 report, Dr. Heckman reported that appellant was seen on June 12, 2003. He opined that appellant was able to resume her modified supervisor customer service position for eight hours a day on June 16, 2003.[3]

In a letter dated June 2, 2004, the Office advised appellant that, since she returned to work in January 2003, her CA-7 claim form for compensation constituted, in essence, a notice of recurrence of disability beginning May 21, 2003. The Office informed appellant of the factual and medical evidence needed to establish a recurrence claim and was provided 30 days to submit such evidence.

In a June 16, 2004 letter, Dr. Heckman replied to the Office's June 2, 2004 request for clarification of appellant's need for a reduced work schedule between May 21 and June 13, 2003. He stated that appellant had indicated to him on May 21 and 22, 2003 that she had been subjected to ongoing pressure from Raul Acosta, manager of customer service, and Anthony

[1] Docket No. 01-1660 (issued May 23, 2002).

[2] As this decision was issued more than one year prior to the date of appellant's appeal to the Board on February 8, 2005, the Board may not review this decision on appeal. 20 C.F.R. § 501.2(c).

[3] The Board notes that the record also contains factual information and progress reports from Dr. Heckman dated February 12 and 14 and March 3 and 18, 2004, which pertain to appellant's contention that a new job offer of February 27, 2004 was outside her restrictions. Since the Office did not issue a final decision on this matter it is not before the Board on this appeal. 20 C.F.R. § 501.2(c).

Daniels, officer-in-charge, since February 2003 which had increased to the point of being intolerable by mid-May 2003. This pressure consisted of ongoing directives and commands to work as the facility safety coordinator, which involved supervising employees, a function which appellant was permanently precluded from performing under her work restrictions. Dr. Heckman noted that this pressure persisted despite appellant providing documentation in writing of this preclusion as well as verbally reminding them on numerous occasions and that she perceived the ignoring of her restrictions and continuous badger of her as harassment and threats. He opined that the ongoing harassment resulted in a worsening of appellant's employment-related condition and, because of a worsening of her symptoms, her medication had to be increased in order to maintain her emotional composure. Dr. Heckman further stated that to prevent further deterioration of appellant's condition, he reduced her work hours for a brief and temporary duration between May 22 and June 13, 2003.

By decision dated July 29, 2004, the Office denied that appellant sustained a recurrence of disability for the period May 21 to June 13, 2003, on the grounds that the evidence was insufficient to establish that she was unable to perform the restricted work duties to which she was assigned because of a material worsening of the accepted condition or that the recurrence was due to a withdrawal of a modified-duty assignment made specifically to accommodate her work injury.[4]

LEGAL PRECEDENT

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury. Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues which must be established, probative and substantial evidence.[5] The Office is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued.[6]

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for 11 hours during the period May 21 through June 13, 2003 and her accepted emotional condition.[7] The

[4] The Board notes that appellant submitted additional evidence with her appeal. As this evidence was not considered by the Office prior to its decision of July 29, 2004, it represents new evidence which cannot be considered for the first time on appeal by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence and any other evidence she may have to the Office together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *See Sharon C. Clement*, 55 ECAB ___ (Docket No. 01-2135, issued May 18, 2004) at n.10, slip op. at 5; *Cf. Elsie L. Price*, 54 ECAB ___ (Docket No. 02-755, issued July 23, 2003 (acceptance of disability for an extended period of time was sufficient to establish that modification of the wage-earning capacity determination was warranted).

[7] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.[8] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[9]

ANALYSIS

Appellant requested wage-loss compensation for a total of 11 hours from May 21 to June 13, 2003. The record reflects that, since January 27, 2003, appellant had been working eight hours a day as a modified customer service supervisor in a nonsupervisory position, which the Office found represented her wage-earning capacity in its April 24, 2003 decision. The Board notes that appellant's established work restriction preclude her from working as a supervisor. Although the Office adjudicated the issue as to whether appellant had established a recurrence of disability from May 21 to June 13, 2004, the Board notes that appellant has not claimed or argued a recurrence of total disability such that modification of the loss of wage-earning capacity determination of April 24, 2003 should be considered.

According to the evidence of record, appellant's established work restriction preclude her from performing supervisory duties. Dr. Heckman noted that appellant was permanently precluded from working in a supervisory capacity and stated that appellant's hours were reduced to five hours of work a day in her modified customer service supervisor position from May 21 to June 13, 2003 as her accepted mental condition had deteriorated due to instructions by her supervisors to work as a facility safety coordinator which required supervision of employees. Dr. Heckman opined that these instructions and directions were contrary to appellant's work limitations and resulted in a worsening of her employment-related condition. He noted that her medication had to be increased and her work hours reduced to prevent further deterioration of appellant's condition for the period May 22 and June 13, 2003. The issue of whether appellant's disability is related to the accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[10] Dr. Heckman discussed appellant's condition and provided sound medical reasoning as to why her work hours were reduced during the period May 22 to June 13, 2003. The Board finds that appellant has established the claimed 11 hours of disability for this period was related to treatment of her employment-related condition.

CONCLUSION

The Board finds that appellant has established her claim for 11 hours of disability compensation for the period May 21 through June 13, 2003.

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[8] *Id.*

[9] *Fereidoon Kharabi*, *supra* note 5.

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alfredo Rodriguez*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 29, 2004 is reversed.[11]

Issued: October 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[11] The Board notes that appellant's case file for her accepted plantar fascitis condition, file number 132051713, has also been associated with this file. In a June 14, 2004 letter, the Office informed appellant that her claim for a schedule award could not be processed. The Office has not issued a final decision regarding appellant's entitlement to a schedule award and the Board may not, therefore, address this issue on appeal. 20 C.F.R. § 501.3(d)(2).